

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

Preprint RECOMMENDATION

Emergency-Related Reforms: Common Interest Development Meetings

Note: This is a pre-print report. The Law Revision Commission has approved the substance of this report, but minor editorial changes may be made prior to final publication.

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SUMMARY OF RECOMMENDATION

Existing law provides that a common interest development can only conduct a board meeting by teleconference if at least one physical location is held open for participation by the owners of separate interests.

The Commission recommends that this requirement be waived during a declared emergency, provided that certain procedural safeguards are met.

This recommendation was prepared pursuant to Resolution Chapter 46 of the Statutes of 2020.

EMERGENCY-RELATED REFORMS: COMMON INTEREST DEVELOPMENT MEETINGS

1 A common interest development (“CID”) is a housing¹ development
2 characterized by (1) separate ownership of dwelling space (or a right of exclusive
3 occupancy) coupled with an undivided interest in common property, (2)
4 covenants, conditions, and restrictions that limit use of both the common area and
5 separate ownership interests, and (3) management of common property and
6 enforcement of restrictions by a community association. CIDs include
7 condominiums, community apartment projects, housing cooperatives, and planned
8 unit developments.²

9 Existing law generally requires that meetings of the board of directors of a
10 CID’s managing association be open to the membership of the association. These
11 requirements are similar in spirit to the open meeting laws that govern state and
12 local government entities.³

13 Existing law allows a CID board to meet by teleconference, but only if there is
14 at least one physical location held open for attendance by members and at least
15 one director attends at that location.⁴

16 A similar requirement exists for state and local agencies.⁵

17 As a result of the COVID-19 pandemic, it became unsafe for groups of people to
18 congregate. “Stay at home” orders were issued, both locally and statewide. The
19 requirement that one location be held open to the public made it impracticable for
20 public bodies to use teleconferencing to conduct open meetings. This was a
21 serious problem, because teleconferencing was the only means of conducting
22 meetings safely during the public health emergency.

23 The same problem exists for CIDs. If association boards are to conduct meetings
24 safely, they may need to use teleconferencing to do so. But existing law makes
25 that impracticable, by requiring that a teleconference meeting be anchored by a
26 physical location that is open to attendance by members, with at least one
27 association official present at that location. Recent experience shows that
28 emergency conditions can persist for many months. It would not be feasible for a
29 CID board to be unable to meet for such a long period of time. This may be
30 especially true in a time of emergency. The board may need to make unusually
31 critical and time-sensitive decisions.

1. Although most CIDs are residential, a CID may also include commercial units. An entirely nonresidential CID is exempt from many of the laws that govern residential CIDs. See Civ. Code § 1373.

2. See Civ. Code § 1351.

3. See Gov’t Code §§ 54950-54963 (Ralph M. Brown Act); 11120-11132 (Bagley-Keene Open Meeting Act).

4. See Civ. Code § 4090(b).

5. See Gov’t Code §§ 54953(b)(3), 11123(b)(1)(C).

1 To address that problem for state and local government meetings, Governor
2 Newsom issued an executive order that waived the requirement that a physical
3 location be held open to the public when conducting a state or local government
4 meeting by teleconference.⁶

5 The Commission recommends a statutory reform to codify the same policy for
6 CIDs. The requirement that a CID board meeting conducted by teleconference
7 have a physical location that is open to members would be waived during a
8 declared emergency.

9 The application of that waiver would not be limited to infectious disease
10 emergencies. There may be other kinds of emergencies, like wildfires, that would
11 make it unsafe or otherwise impracticable for an association to meet in a physical
12 location.

13 In addition, the waiver would only apply if certain procedural safeguards are
14 satisfied:

- 15 • Notice of the meeting must include detailed instructions on how to
16 participate in the teleconference.
- 17 • The notice must include contact information for a person designated to
18 provide technical assistance with the teleconference process, both before
19 and during the meeting.
- 20 • A vote of the directors must be conducted by roll call.
- 21 • Members must be allowed to participate by telephone.

6. See Executive Order N-29-20.

PROPOSED LEGISLATION

1 **Civ. Code § 4090 (amended). “Board meeting” defined**

2 SECTION 1. Section 4090 of the Civil Code is amended to read:

3 4090. “Board meeting” means either of the following:

4 (a) A congregation, at the same time and place, of a sufficient number of
5 directors to establish a quorum of the board, to hear, discuss, or deliberate upon
6 any item of business that is within the authority of the board.

7 (b) A teleconference, where a sufficient number of directors to establish a
8 quorum of the board, in different locations, are connected by electronic means,
9 through audio or video, or both. A teleconference meeting shall be conducted in a
10 manner that protects the rights of members of the association and otherwise
11 complies with the requirements of this act. Except for a meeting that will be held
12 solely in executive session or conducted under Section 5450, the notice of the
13 teleconference meeting shall identify at least one physical location so that
14 members of the association may attend, and at least one director or a person
15 designated by the board shall be present at that location. Participation by directors
16 in a teleconference meeting constitutes presence at that meeting as long as all
17 directors participating are able to hear one another, as well as members of the
18 association speaking on matters before the board.

19 **Comment.** Section 4090 is amended to reflect the enactment of Section 5450.

20 **Civ. Code § 5450 (added). Emergency teleconference meeting**

21 SEC. 2. Article 11 (commencing with Section 5450) is added to Chapter 6 of
22 Part 5 of Division 4 of the Civil Code, to read:

23 Article 11. Emergency Powers and Procedures

24 5450. (a) This section only applies to a common interest development that is in
25 an area affected by one or more of the following conditions:

26 (1) A state of disaster or emergency declared by the federal government.

27 (2) A state of emergency proclaimed by the Governor under Section 8625 of the
28 Government Code.

29 (3) A local emergency proclaimed by a local governing body or official under
30 Section 8630 of the Government Code.

31 (b) Notwithstanding subdivision (b) of Section 4090, any other law, or the
32 association’s governing documents, a board meeting or meeting of the members
33 may be conducted entirely by teleconference, without any physical location being
34 held open for the attendance of any director or member, if all of the following
35 conditions are satisfied:

36 (1) The meeting notice provides clear technical instructions on how to
37 participate by teleconference.

1 (2) The meeting notice provides the telephone number and electronic mail
2 address of a person who can provide technical assistance with the teleconference
3 process, both before and during the meeting.

4 (3) Every director and member has the same ability to participate in the meeting
5 that would exist if the meeting were held in person.

6 (4) Any vote of the directors shall be conducted by a roll call vote.

7 (5) Any person who is entitled to participate in the meeting shall be given the
8 option of participating by telephone.

9 **Comment.** Section 5450 is new.

10 Subdivision (a) governs the application of the section. See also 42 U.S.C. §§ 247d (federal
11 public health emergency), 5120-5208 (federal disaster relief).

12 Subdivision (b) authorizes meetings to be conducted entirely by teleconference, if certain
13 conditions are met.

14 Paragraphs (b)(1) and (2) govern the required content of notice of a meeting conducted under
15 this section. The method of delivery of a board meeting notice is governed by Section 4045
16 (general delivery). Under Section 4045(b) any member has the right to receive meeting notice by
17 individual delivery under Section 4040, which can include delivery by electronic mail. That
18 option must be noted in the common interest development's annual policy statement. See Section
19 5310(a)(4).

20 Paragraph (b)(4) is similar to Government Code Section 11123(b)(1)(D).

21 Paragraph (b)(5) provides that a meeting conducted under this section must afford every
22 director and member of the association the same right to participate in the meeting that the person
23 would have had in a face-to-face meeting. This would include the right to witness the opening
24 and counting of paper ballots under Section 5120(a). To comply with that requirement, the
25 meeting would need to provide video that clearly shows the opening of ballot envelopes and the
26 votes cast by the ballots, sufficient to demonstrate the accuracy of the process.